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# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

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A N A C T

RELATING TO SECURITIES

Introduced By: Senator Walter S. Felag

Date Introduced: June 04, 2003

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 7-11-101 of the General Laws in Chapter 7-11 entitled "Rhode  
2 Island Uniform Securities Act" is hereby amended to read as follows:

3           **7-11-101. Definitions.** -- In this chapter:

4           (1) "Broker dealer" means a person engaged in the business of effecting transactions in  
5 securities for the account of others or for the person's own account. "Broker dealer" does not  
6 include:

7           (i) A sales representative;

8           (ii) An issuer, except when effecting transactions other than as to its own securities; ~~and~~

9           (iii) Any other person that the director, by rule or order, designates; or

10           (iv) A depository institution if said depository institution is not considered a "broker" or  
11 "dealer" under section 3(a)(4) or 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. Sec.  
12 78C(a)(4) and (5), the "Act") or any regulation or rule adopted by the Securities and Exchange  
13 Commission under the Act.

14           (2) "Depository institution" means:

15           (i) A person which is organized, chartered, or holding an authorization certificate under  
16 the laws of a state or of the United States which authorizes the person to receive deposits,  
17 including a savings, share, certificate, or deposit account, and which is supervised and examined  
18 for the protection of depositors by an official or agency of a state or the United States;

19           (ii) A trust company or other institution that is authorized by federal or state law to

1 exercise fiduciary powers of the type a national bank is permitted to exercise under the authority  
2 of the comptroller of the currency and is supervised and examined by an official or agency of a  
3 state or the United States; and

4 (iii) "Depository institution" does not include an insurance company or other  
5 organization primarily engaged in the insurance business, or a Morris plan bank, industrial loan  
6 company, or a similar bank or company unless its deposits are insured by a federal agency.

7 (3) "Director" means the director of the department of business regulation.

8 (4) "Federal covered adviser" means a person who is:

9 (i) Registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C.  
10 section 80b-3; or

11 (ii) Is excluded from the definition of "investment adviser" under section 202(a)(11) of  
12 the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1(a)(11).

13 (5) "Federal covered security" means any security that is a covered security under  
14 section 18(b) of the Securities Act of 1933, 15 U.S.C. section 77r(b), or rules or regulations  
15 promulgated under that section.

16 (6) "Filed" means the actual delivery of a document or application to the director or  
17 designee of the director or to the principal office of the director.

18 (7) "Financial or institutional investor" means any of the following, whether acting for  
19 itself or another in a fiduciary capacity:

20 (i) A depository institution;

21 (ii) An insurance company;

22 (iii) A separate account of an insurance company;

23 (iv) An investment company as defined in the Investment Company Act of 1940, 15  
24 U.S.C. section 80a-1 et seq.;

25 (v) An employee pension, profit sharing or benefit plan if the plan has total assets in  
26 excess of five million dollars (\$5,000,000), or if investment decisions are made by a plan  
27 fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section  
28 1001 et seq., which is either a broker dealer registered under the Securities Exchange Act of  
29 1934, 15 U.S.C. section 78a et seq., an investment adviser registered or exempt from registration  
30 under the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1 et seq., a depository  
31 institution, or an insurance company; and

32 (vi) Any other institutional buyer.

33 (8) "Fraud", "deceit", and "defraud" are not limited to common law fraud or deceit.

34 (9) For purposes of section 7-11-401, "guaranteed" means guaranteed as to payment of

1 all or substantially all of principal and interest or dividends.

2 (10) For purposes of section 7-11-401, "insured" means insured as to payment of all or  
3 substantially all of principal and interest or dividends.

4 (11) "Investment adviser" means a person who, for compensation, engages in the  
5 business of advising others, either directly or through publications or writings, as to the value of  
6 securities or as to the advisability of investing in, purchasing, or selling securities, or who, for  
7 compensation and as part of a regular business, issues or promulgates analyses or reports  
8 concerning securities. "Investment adviser" does not include:

9 (i) An investment adviser representative;

10 (ii) A trust company or other institution described in subdivision (2)(ii) of this section;

11 (iii) A lawyer, accountant, engineer, or teacher whose performance of investment  
12 advisory services is solely incidental to the practice of the person's profession;

13 (iv) A broker dealer or its agent whose performance of investment advisory services is  
14 solely incidental to the conduct of business as a broker dealer and who receives no special  
15 compensation for the investment advisory services;

16 (v) A publisher of any bona fide newspaper, news column, newsletter, news magazine,  
17 or business or financial publication or service, whether communicated in hard copy form, or by  
18 electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the  
19 specific investment situation of each client;

20 (vi) A person whose advice, analyses, or reports relate only to securities exempt under  
21 section 7-11-401(1);

22 (vii) Any person as the director, by rule or order, designates; and

23 (viii) A person who is a federal covered adviser.

24 (12) (i) "Investment adviser representative" means any partner, officer, director of (or a  
25 person occupying a similar status or performing similar functions) or other individual, except  
26 clerical or ministerial personnel, who is employed by or associated with;

27 (A) An investment adviser that is registered or required to be registered under this  
28 chapter and who does any of the following:

29 (I) Makes any recommendations or otherwise renders advice regarding securities to  
30 clients;

31 (II) Manages accounts or portfolios of clients;

32 (III) Determines which recommendation or advice regarding securities should be given;

33 (IV) Solicits, offers, or negotiates for the sale of or sells investment advisory services;

34 (V) Supervises employees who perform any of the preceding; or

1 (B) A federal covered adviser, subject to the limitations of sections 203(A) of the  
2 Investment Advisors Act of 1940, 15 U.S.C. section 80b-3(A), as the director may designate by  
3 rule or order.

4 (ii) Notwithstanding subdivisions (12)(i)(A) and (12)(i)(B), an investment adviser  
5 representative shall not include any other persons employed by or associated with either an  
6 investment adviser or a federal covered adviser not within the intent of subdivision (12) that the  
7 director may designate by rule or order or as otherwise specifically excluded by rule of the U.S.  
8 Securities and Exchange Commission.

9 (13) (i) Except as provided in subdivisions (13)(ii) through (13)(iv), "issuer" means a  
10 person who issues or proposes to issue a security.

11 (ii) The "issuer" of a collateral trust certificate, voting trust certificate, certificate of  
12 deposit for a security, or share in an investment company without a board of directors or persons  
13 performing similar functions, is a person performing the acts and assuming the duties of depositor  
14 or manager pursuant to the trust or other agreement or instrument under which the security is  
15 issued.

16 (iii) The "issuer" of an equipment trust certificate, including a conditional sales contract  
17 or similar security serving the same purpose, is the person to whom the equipment or property is  
18 or is to be leased or conditionally sold.

19 (iv) The "issuer" of a fractional undivided interest to an oil, gas, or other mineral lease or  
20 in payments out of production under a lease, right, or royalty, is the owner of an interest in the  
21 lease or in payments out of production under a lease, right, or royalty, whether whole or  
22 fractional, who creates fractional interest for the purpose of sale.

23 (14) "Nonissuer transaction" means a transaction not directly or indirectly for the benefit  
24 of the issuer.

25 (15) "Person" means a natural person, corporation, business trust, estate, trust,  
26 partnership, association, joint venture, government in its private or public capacity, governmental  
27 subdivision or agency, or any other legal or commercial entity.

28 (16) "Person associated with" a named party or parties or "associated person of" a named  
29 party or parties means any partner, officer, director, or branch manager of the named party or  
30 parties (or any person occupying a similar status or performing similar functions), any person  
31 directly or indirectly controlling, controlled by, or under common control with the named party or  
32 parties or any employee of the named party or parties, except that any associated person whose  
33 functions are solely clerical or ministerial are not included in the meaning of the term for  
34 purposes of this chapter.

1 (17) "Price amendment" means the amendment to a registration statement filed under the  
2 Securities Act of 1933, 15 U.S.C. section 77a et seq., or, if no amendment is filed, the prospectus  
3 or prospectus supplement filed under the Securities Act of 1933, which includes a statement of  
4 the offering price, underwriting and selling discounts or commissions, amounts of proceeds,  
5 conversion rates, call prices, and other matters dependent on the offering price.

6 (18) "Promoter" includes:

7 (i) A person who, acting alone or in concert with one or more other persons, takes the  
8 entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

9 (ii) An officer or director owning securities of an issuer or a person who owns,  
10 beneficially or of record, ten percent (10%) or more of a class of securities of the issuer if the  
11 officer, director, or person acquires any of those securities in a transaction within three (3) years  
12 before the filing by the issuer of a registration statement under this chapter and the transaction  
13 does not possess the indicia of arms length bargaining; and

14 (iii) A member of the immediate family of a person within subparagraph (i) or (ii) if the  
15 family member receives securities of the issuer from that person in a transaction within three (3)  
16 years before the filing by the issuer of a registration statement under this chapter and the  
17 transaction does not possess the indicia of arms length bargaining.

18 (19) (i) "Sale" or "sell" includes every contract of sale, contract to sell, or other  
19 disposition, of a security or interest in a security for value.

20 (ii) "Offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer  
21 to purchase, a security or interest in a security for value.

22 (iii) "Offer to purchase" includes every attempt or offer to obtain, or solicitation of an  
23 offer to sell, a security or interest in a security for value, but the term does not include a  
24 transaction that is subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C.  
25 section 78n(d).

26 (iv) A security given or delivered with or as a bonus on account of a purchase of  
27 securities or other item is considered to constitute part of the subject of the purchase and to have  
28 been offered and sold for value.

29 (v) A gift of assessable stock is deemed to involve an offer and sale.

30 (vi) A sale or offer of a warrant or right to purchase or subscribe to another security of  
31 the same or another issuer, or a sale or offer of a security that gives the holder a present or future  
32 right or privilege to convert into another security of the same or another issuer, is deemed to  
33 include an offer of the other security.

34 (vii) The terms defined in this paragraph do not include:

1 (A) the creation of a security interest or a loan;

2 (B) a stock dividend, whether or not the corporation distributing the dividend is the  
3 issuer of the stock, if nothing of value is given by stockholders for the dividend other than the  
4 surrender of a right to a cash or property dividend and each stockholder may elect to take the  
5 dividend in cash, property, or stock; or

6 (C) an act incident to a judicially approved reorganization in which a security is issued in  
7 exchange for one or more outstanding securities, claims, or property interests, or partly in  
8 exchange and partly for cash.

9 (20) "Sales representative" means a person, other than a broker dealer, associated with a  
10 broker dealer or issuer in effecting or attempting to effect purchases or sales of securities.

11 (21) "Securities Act of 1933", 15 U.S.C. section 77a et seq., "Securities Exchange Act of  
12 1934", 15 U.S.C. section 78a et seq., "Public Utility Holding Company Act of 1935", 15 U.S.C.  
13 section 79 et seq., "Investment Company Act of 1940", 15 U.S.C. section 80a-1 et seq.,  
14 "Investment Advisers Act of 1940", 15 U.S.C. section 80b-1 et seq., "Employee Retirement  
15 Income Security Act of 1974", 29 U.S.C. section 1001 et seq., "National Housing Act", 12 U.S.C.  
16 section 1701 et seq., and "Commodity Exchange Act", 7 U.S.C. section 2 et seq., mean the  
17 federal statutes of those names as amended before or after July 6, 1990.

18 (22) Unless the context requires otherwise, "security" means a note; stock; treasury  
19 stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit  
20 sharing agreement; a limited partnership interest; collateral trust certificate; variable annuity;  
21 preorganization certificate or subscription; transferable share; investment contract; voting trust  
22 certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other  
23 mineral lease or in payments out of production under a lease, right, or royalty; a put, call,  
24 straddle, or option entered into on a national securities exchange relating to foreign currency; a  
25 put, call, straddle, or option on a security, certificate of deposit, or group or index of securities,  
26 including an interest in or based on the value of any of the preceding; or, in general, an interest or  
27 instrument commonly known as a "security", or a certificate of interest or participation in,  
28 temporary or interim certificate for, receipt for, whole or partial guarantee of, or warrant or right  
29 to subscribe to or purchase, any of the preceding. The term does not include:

30 (i) An insurance or endowment policy or annuity contract under which an insurance  
31 company promises to pay a fixed sum of money either in a lump sum or periodically for life or  
32 some other specified period; or

33 (ii) An interest in a contributory or noncontributory pension or welfare plan subject to  
34 the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq.

1           (23) "Self regulatory organization" means a national securities exchange registered under  
2 section 7 of the Securities Exchange Act of 1934, 15 U.S.C. section 78g, a national securities  
3 association of brokers and dealers registered under section 15A of the Securities Exchange Act of  
4 1934, 15 U.S.C. section 78o-3, a clearing agency registered under section 17A of the Securities  
5 Exchange Act of 1934, 15 U.S.C. section 78k-1, or the municipal securities rule making board  
6 established under section 15B(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. section  
7 78o-4(b)(1).

8           (24) "State" means a state, commonwealth, territory, or possession of the United States,  
9 including both the District of Columbia and the Commonwealth of Puerto Rico.

10          (25) "Willfully" means intentionally committing the act which constitutes a violation;  
11 there being no requirement that the actor also be aware that he or she is violating any provision of  
12 this chapter or any rule or order under this chapter.

13          SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO SECURITIES

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- 1           This act would conform the Rhode Island Uniform Securities Act to the original Uniform
- 2 Securities Act of 1985.
- 3           This act would take effect upon passage.

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